



FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

Assessment Regulations

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule; technical amendments.

SUMMARY: The FDIC is making technical amendments to its rules governing deposit insurance assessments. The FDIC believes that the amendments will have little or no effect on the deposit insurance assessments for insured depository institutions (IDIs), and any potential effect would result in lower assessments. The first technical amendment makes clear that small bank assessment credits will be applied for assessment periods in which the reserve ratio of the Deposit Insurance Fund (DIF) is at least 1.38 percent instead of, as currently provided, just when the ratio exceeds 1.38 percent. The second technical amendment removes a data item from the assessment regulations that most small banks can no longer report on the Consolidated Report of Income and Condition (Call Report). The third technical amendment re-incorporates, for assessment purposes, the capital definitions and ratio thresholds used for prompt corrective action (PCA) that were inadvertently removed in a 2016 rulemaking.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Technical Amendment Regarding Use of Credits for Small Banks

The FDIC is correcting a drafting error regarding a provision of the deposit insurance assessment regulations that governs the use of assessment credits for small banks.¹ Under the FDIC’s assessment regulations, the FDIC will provide small banks with assessment credits for the portion of their regular assessments that contribute to the increase in the DIF reserve ratio from 1.15 percent to 1.35 percent. The regulatory text further states that the FDIC will apply assessment credits to a small bank’s deposit insurance assessments for assessment periods in which the reserve ratio of the DIF exceeds 1.38 percent. Consistent with the preamble language of the final rule in which this provision was adopted (the Minimum Reserve Ratio final rule²), the regulatory text should state that small bank assessment credits will be applied for assessment periods in which the DIF reserve ratio is at least 1.38 percent—that is, at or above 1.38 percent and not just above 1.38 percent.

The FDIC also is making a technical edit to update a cross reference in the same subsection. Currently, the subsection refers to section 327.9. However, as of June 30, 2016, § 327.9 ceased to be in effect, and the operative section is now § 327.16. As a result, the reference is being updated to refer to § 327.16.

¹ As used herein, the term “bank” is synonymous with “insured depository institution.” Generally, for deposit insurance assessment purposes, a “small bank” is an insured depository institution with less than \$10 billion in total consolidated assets. See 12 CFR 327.8(e).

² 81 FR 16059 (Mar. 25, 2016). The final rule implemented section 334 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which: (1) raises the minimum reserve ratio for the DIF to 1.35 percent (from the former minimum of 1.15 percent); (2) requires that the DIF reserve ratio reach 1.35 percent by September 30, 2020; and (3) requires that, in setting assessments, the FDIC “offset the effect of [the increase in the minimum reserve ratio from 1.15 percent to 1.35 percent] on insured depository institutions with total consolidated assets of less than \$10,000,000,000.”

II. Technical Amendment Regarding the Loan Mix Index

The Loan Mix Index (LMI), which measures the relative riskiness of a bank's loan portfolio, is one of the measures used in the assessment regulations to calculate an established small bank's³ assessment rate.⁴ The LMI includes Loans to Foreign Governments as a loan category.

Effective March 31, 2017, as part of an initiative to reduce Call Report burden for community banks, the Federal Financial Institutions Examination Council (FFIEC) added a new and streamlined Call Report form (FFIEC 051) for banks that have less than \$1 billion in total assets and no foreign offices. The FFIEC also revised the general Call Report form (FFIEC 041) for banks with no foreign offices. As part of that initiative, the FFIEC removed the line item for reporting loans to foreign governments from Call Report form FFIEC 041 and excluded the item from the new Call Report form FFIEC 051. The Call Report form for banks with both foreign and domestic offices (FFIEC 031), however, still includes a line item for reporting loans to foreign governments.

Because most small banks are no longer able to report these loans as a separate item on the Call Report, the FDIC is removing Loans to Foreign Governments from the calculation of the LMI in the established small bank deposit insurance pricing methodology.

III. Technical Amendments Regarding Definitions of Capital Categories

The FDIC is making technical amendments to reinsert PCA capital ratios and ratio thresholds used to define capital categories (i.e., well-capitalized, adequately

³ Generally, an established small bank is one that has been federally insured for five years or more. See 12 CFR 327.8(k).

⁴ See 81 FR 32180, 32186-32188 (May 20, 2016).

capitalized, under-capitalized) in the assessment regulations. The definitions of capital categories for deposit insurance assessment purposes were inadvertently deleted in a 2016 rulemaking, known as the Small Bank Pricing rule.⁵ Currently the deposit insurance assessment system uses capital categories to calculate two ratios that affect assessment rates.⁶

Since the implementation of the risk-based deposit insurance assessment system in 1993, the FDIC has used the same capital ratios and ratio thresholds to define capital categories for deposit insurance assessment purposes as those used for PCA purposes, except that capital categories defined for assessment purposes rely solely on capital ratios. When the FDIC implemented the risk-based deposit insurance assessment system in 1993, it chose not to incorporate other supervisory information, such as enforcement orders, used to define capital categories for PCA purposes because this information was more appropriately considered with regard to supervisory evaluations, which were (and continue to be) a separate component of assessment pricing.⁷ Thus, while the current

⁵ The Small Bank Pricing rule refined the deposit insurance pricing methodology for established small banks. See 81 FR 32180 (May 20, 2016). The Small Bank Pricing rule made no changes to the way assessments are calculated for new small banks, keeping in place the definitions of capital categories adopted by the FDIC in 2014.

⁶ The two ratios are the brokered deposit ratio and the brokered deposit adjustment. The brokered deposit ratio is one of the measures used to determine the assessment rate for an established small bank. An established small bank that has a CAMELS composite rating of 1 or 2 and is well capitalized may deduct reciprocal deposits from the brokered deposit ratio; otherwise, it cannot deduct these deposits. See 12 CFR 327.16(a)(1)(ii). The brokered deposit adjustment applies only to large banks and highly complex institutions that are less than well capitalized or have a CAMELS composite rating of 3, 4, or 5. The brokered deposit adjustment increases a bank's assessment rate if it has high levels of brokered deposits. See 12 CFR 327.16(e)(3). The deposit insurance assessment system also uses capital categories to calculate assessments for new small banks (i.e., a small bank that has been federally insured for less than five years).

⁷ See 57 FR 45263, 45279 (Oct. 1, 1992). "These assessment definitions reflect only the capital ratio standards from the proposed PCA definitions, which include other elements as well... These elements are not incorporated in the definitions of the capital groups for risk-based assessment purposes. In the risk-based assessment context, these elements are more appropriately considered with regard to supervisory subgroup determinations."

PCA standards in the capital rules⁸ permit a bank to be reclassified to a lower capital category if the bank is subject to certain enforcement orders or other specific supervisory findings (even if the bank meets the PCA capital ratio requirements for a higher capital category),⁹ such a reclassification would be inconsistent with the FDIC's longstanding practice of relying solely on capital ratios to define capital categories for deposit insurance assessment purposes.

To remedy the error that resulted from the Small Bank Pricing rule, the FDIC is amending its regulations to reincorporate the PCA capital ratios and ratio thresholds into the deposit insurance assessment system. The technical amendment aligns the regulatory text with the FDIC's intent to "maintain[] the consistency between capital evaluations for deposit insurance assessment purposes and capital ratios and ratio thresholds for PCA purposes that has existed since the creation of the risk-based assessment system over 20 years ago."¹⁰ The technical amendment will re-incorporate the PCA capital ratios and ratio thresholds for defining capital categories in a manner that make them applicable to

⁸ See 12 CFR 6.4, 12 CFR 208.43, and 12 CFR 324.403.

⁹ For PCA purposes, an IDI that otherwise meets the ratio threshold requirements for the well capitalized PCA category: (1) will be classified as an adequately capitalized if it is subject to a written agreement, order, capital directive, or prompt corrective action directive to meet and maintain a specific capital level for any capital measure; and (2) may be reclassified as adequately capitalized, if, following notice and an opportunity for hearing, the bank is determined to be unsafe or unsound or has failed to correct a less-than-satisfactory rating for asset quality, management, earnings, or liquidity. See 12 CFR 6.4(c)(1)(v) and (e), 12 CFR 208.43(b)(1)(v) and (c), and 12 CFR 324.403(b)(1)(v) and (d).

¹⁰ 79 FR 70427, 70429 (Nov. 26, 2014) (the Capital Conforming Amendments final rule). In 2014, the FDIC published the Capital Conforming Amendments final rule that, among other things, revised the ratios and ratio thresholds relating to definitions of capital categories for deposit insurance assessment purposes to conform to the PCA capital ratios and ratio thresholds adopted by the FDIC, Office of the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System in 2013. See 79 FR 20754 (Apr. 14, 2014), 78 FR 55340 (Sept. 10, 2013), and 78 FR 62018 (Oct. 11, 2013).

all banks (other than insured branches of foreign banks), and will continue to rely solely on capital ratios to define capital categories for deposit insurance assessment purposes.¹¹

IV. Economic Effects

A. Technical Amendments Regarding Use of Credits for Small Banks

In the preamble to the Minimum Reserve Ratio final rule, which is incorporated here by reference, the FDIC described its anticipated economic effects.¹² The economic effects of that final rule are unchanged by the amendments to the regulatory text. No institutions are presently affected by correcting the regulatory text to state that small bank assessment credits will be applied for assessment periods in which the DIF reserve ratio is *at least* 1.38 percent because the reserve ratio has not yet reached that level. These amendments avoid any ambiguity regarding when the FDIC will begin applying the small bank credits, and will not affect the amount of credits to be awarded any small bank. In the event that the DIF reserve ratio is 1.38 percent at the end of a quarter, then these amendments will effectuate the FDIC's existing intent to permit small banks to use credits in that quarter.

B. Technical Amendment to the Loan Mix Index

The FDIC estimates that the removal of Loans to Foreign Governments from the LMI will have virtually no economic effect. Because the FFIEC removed the line item for reporting loans to foreign governments from Call Report form FFIEC 041 and

¹¹ Current assessment regulations generally incorporate PCA capital standards for new small banks, but, as the result of an error, they do not incorporate for new small banks the PCA standard that an advanced approaches bank will be considered undercapitalized if it has a supplementary leverage ratio (SLR) of less than 3.0 percent. As defined in the PCA capital rules, an advanced approaches bank, including one that is a new small bank, will be considered undercapitalized if its SLR is below 3.0 percent, even if all other ratios meet the ratio thresholds for well capitalized or adequately capitalized. See 12 CFR 6.4(c)(3)(iv)(B), 208.43(b)(3)(iv)(B), and 324.403(b)(3)(v).

¹² See 81 FR at 16066-068.

excluded the item from the new Call Report form FFIEC 051, the inclusion of loans to foreign governments in the LMI no longer helps to differentiate the relative riskiness of a bank's loan portfolio for the purposes of calculating its risk-based assessment rate. Further, based on FDIC data, from 2011 through 2016, when all banks could report the item, fewer than 10 small banks reported a balance for loans to foreign governments and official institutions in a given year. During 2017, only one bank out of the 5,746 established small banks (and out of 26 small banks that filed the FFIEC 031) reported a balance for Loans to Foreign Governments, and the resulting effect on the bank's assessment rate was immaterial. Therefore, for any bank that holds these loans and files the FFIEC 031, the amendment would either have no effect or would reduce the bank's assessment rate. Removal of the loan category would not affect banks that file FFIEC 041 or 051 because they have not been able to report loans in this category as a separate item since December 31, 2016.

C. Technical Amendments Regarding Definitions of Capital Categories

The FDIC expects that these technical amendments will not have any economic effect. In practice and consistent with the FDIC's intent when it adopted the Capital Conforming Amendments final rule, the FDIC has relied solely on capital ratios to determine a bank's capital category for deposit insurance assessment purposes. Also consistent with longstanding practice, the FDIC has not considered enforcement orders or other specific supervisory findings that might reclassify a bank to a lower capital category. Thus, the technical amendments clarify that any bank that meets the PCA ratio

thresholds in the capital rules will not be reclassified for assessment purposes to a lower capital category for other reasons.^{13, 14}

V. Regulatory Analysis and Procedure

A. Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public comment procedure thereon are impracticable, unnecessary, or contrary to the public interest. The FDIC finds that notice and comment procedures are unnecessary under 5 U.S.C. 553(b)(B), as this rule consists only of technical amendments that are minor and will have no substantive effect on the public. First, regarding the technical amendments on the use of small bank credits, this rule aligns the regulatory text with the intent of that final rule. Second, regarding the technical amendment to the LMI in the small bank pricing methodology, the amendment in this rule aligns with FFIEC's changes to Call Report forms to reduce reporting burden for community banks, and is immaterial because the inclusion of loans to foreign governments in the LMI currently affects only one bank's assessment rate (resulting in an insignificant amount). Moreover, these loans no longer help to differentiate the relative riskiness of an established small bank's loan portfolio. Third, regarding the technical

¹³ A bank that meets the quantitative measures for the well capitalized PCA category is considered less than well capitalized for PCA purposes, for example, if it is subject to a written agreement, order, capital directive, or prompt corrective action directive to meet and maintain a specific capital level for any capital measure or the bank had been determined to be unsafe or unsound or had failed to correct a less-than-satisfactory rating for asset quality, management, earnings, or liquidity.

¹⁴ Consistent with the capital rules and the FDIC's intent in the Capital Conforming Amendments final rule, the amendments also make clear that any advanced approaches bank that is a new small bank will be undercapitalized if the bank has an SLR below 3.0 percent, even if all other capital ratios meet the ratio thresholds for well capitalized or adequately capitalized. Based on Call Report data as of December 31, 2017, the most recent date for which data is available, no advanced approaches bank will be affected by this clarification.

amendments relating to definitions of capital categories, this rule aligns the regulatory text with the intent of the Capital Conforming Amendments and Small Bank Pricing final rules to incorporate the PCA capital ratios and ratio thresholds in the capital rules into the definitions of capital categories used in the deposit insurance assessment system, but without including the PCA provisions that permit a bank to be reclassified to a lower capital category for reasons other than capital ratios. The amendments regarding the definitions of capital categories will not affect the assessment rate of any bank.

Considering the circumstances mentioned above, the FDIC has determined that publishing a notice of proposed rulemaking and providing opportunity for comment is unnecessary.

Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. As explained above, the FDIC finds that this rule consists only of technical amendments that are minor and will have no substantive effect on the public. Also, because delaying the effective date of these technical amendments would serve no purpose, the FDIC finds good cause to make this rule effective upon publication.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.¹⁵ As noted above, the FDIC has determined that it is unnecessary to publish a notice of proposed rulemaking for these

¹⁵ See 5 U.S.C. 603 and 604.

technical amendments. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Moreover, certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of "rule" for purposes of the RFA. This rule, and the technical amendments in this rule, relate directly to the rates imposed on IDIs for deposit insurance and to the assessment system that measures risk and determines each IDI's assessment rate.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget (OMB) has determined that the final rule is not a major rule within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996,¹⁶ and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

D. Riegle Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act (RCDRIA) requires that the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on IDIs, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers or

¹⁶ 5 U.S.C. 801, *et seq.*

depository institutions, as well as the benefits of such regulations.¹⁷ Subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosure, or other new requirements on IDIs shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.¹⁸

The FDIC has determined that RCDRIA does not apply to the rule because the technical amendments do not impose additional reporting, disclosures, or other requirements on IDIs.

E. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. sections 3501-3521, the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The FDIC reviewed the rule and concludes that the technical amendments do not create any new, or revise any existing, collections of information pursuant to PRA. Therefore, no submission will be made to OMB.

*F. The Treasury and General Government Appropriations Act, 1999—
Assessment of Federal Regulations and Policies on Families*

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105-277, 112 Stat. 2681).

¹⁷ 12 U.S.C. 4802(a).

¹⁸ 12 U.S.C. 4802(b).

G. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the Federal Register after January 1, 2000. As noted above, the FDIC has determined that it is unnecessary to publish a notice of proposed rulemaking for these technical amendments. The FDIC has sought to present the final rule in a simple and straightforward manner.

List of Subjects in 12 CFR 327

Bank deposit insurance; Banks, Banking; Savings associations.

Authority and Issuance

For the reasons set forth in the preamble, chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817-19, 1821.

2. In § 327.8, add paragraph (z) to read as follows:

§ 327.8 Definitions.

* * * * *

(z) *Well capitalized, adequately capitalized and undercapitalized.* For any insured depository institution other than an insured branch of a foreign bank, Well Capitalized, Adequately Capitalized and Undercapitalized have the same meaning as in: 12 CFR 6.4 (for national banks and federal savings associations), as either may be amended from time to time, except that 12 CFR 6.4(c)(1)(v) and (e), as they may be amended from time

to time, shall not apply; 12 CFR 208.43 (for state member institutions), as either may be amended from time to time, except that 12 CFR 208.43(b)(1)(v) and (c), as they may be amended from time to time, shall not apply; and 12 CFR 324.403 (for state nonmember institutions and state savings associations), as either may be amended from time to time, except that 12 CFR 324.403(b)(1)(v) and (d), as they may be amended from time to time, shall not apply.

3. In § 327.11, revise paragraphs (c)(3)(i) and (c)(11)(i) to read as follows:

§ 327.11 Surcharges and assessments required to raise the reserve ratio of the DIF to 1.35 percent.

* * * *

(c) * * *

(3) * * *

(i) *Fraction of quarterly regular deposit insurance assessments paid by credit accruing institutions.* The fraction of assessments paid by credit accruing institutions shall equal quarterly deposit insurance assessments, as determined under §§ 327.9 and 327.16, paid by such institutions for each assessment period during the credit calculation period, divided by the total amount of quarterly deposit insurance assessments paid by all insured depository institutions during the credit calculation period, excluding the aggregate amount of surcharges imposed under paragraph (b) of this section.

* * * *

(11) * * *

(i) The FDIC shall apply assessment credits awarded under paragraph (c) of this section to an institution's deposit insurance assessments, as calculated under §§ 327.9 and

327.16, only for assessment periods in which the reserve ratio of the DIF is at least 1.38 percent.

* * * *

4. In § 327.16, revise paragraphs (a)(1)(ii)(B) and (c)(2) to read as follows:

§ 327.16 Assessment pricing methods—beginning the first assessment period after June 30, 2016, where the reserve ratio of the DIF as of the end of the prior assessment period has reached or exceeded 1.15 percent.

(a) * * *

(1) * * *

(ii) * * *

(B) *Definition of loan mix index.* The Loan Mix Index assigns loans in an institution's loan portfolio to the categories of loans described in the following table. The Loan Mix Index is calculated by multiplying the ratio of an institution's amount of loans in a particular loan category to its total assets by the associated weighted average charge-off rate for that loan category, and summing the products for all loan categories. The table gives the weighted average charge-off rate for each category of loan. The Loan Mix Index excludes credit card loans.

LOAN MIX INDEX CATEGORIES AND WEIGHTED CHARGE-OFF RATE PERCENTAGES

	Weighted charge-off rate (percent)
Construction & Development	4.4965840
Commercial & Industrial	1.5984506

Leases	1.4974551
Other Consumer	1.4559717
Real Estate Loans Residual	1.0169338
Multifamily Residential	0.8847597
Nonfarm Nonresidential	0.7289274
I--4 Family Residential	0.6973778
Loans to Depository Banks	0.5760532
Agricultural Real Estate	0.2376712
Agriculture	0.2432737

* * * * *

(c) * * *

(2) *Capital evaluations.* Each new small institution will receive one of the following three capital evaluations on the basis of data reported in the institution's Consolidated Reports of Condition and Income or Thrift Financial Report (or successor report, as appropriate) dated as of the last day of each assessment period: Well Capitalized, Adequately Capitalized, or Undercapitalized as defined in § 327.8(z) of this chapter.

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Dated at Washington, DC on March 20, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

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